



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

May 12, 1998

Mr. Ryan Tredway  
Staff Attorney  
Legal and Compliance Division  
MC 110-1A  
Texas Department of Insurance  
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Austin, Texas 78714-9104

OR98-1207

Dear Mr. Tredway:

You have asked whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 114712

The Texas Department of Insurance (the "department") received a request for the commercial vehicle rate filings of certain companies. You state that some of the requested information has been provided to the requestor, but you have asked this office to determine, pursuant to section 552.305 of the Government Code, whether the Southern County Mutual Insurance Company ("Southern County Mutual") rate filings are protected from disclosure. This office notified Southern County Mutual that the department had received a request for its commercial vehicle rate filings. *See* Gov't Code § 552.305 (permitting interested third party to submit to attorney general reasons why requested information should not be released); Open Records Decision Nos. 575 (1990), 542 (1990) (determining that statutory predecessor to section 552.305 of Government Code permits governmental body to rely on interested third party to raise and explain applicability of exception to required public disclosure in certain circumstances).

Southern County Mutual contends that the requested rate filings are protected trade secrets under section 552.110 of the Government Code. Section 552.110 excepts from required public disclosure "[a] trade secret or commercial or financial information obtained from a person and privileged or confidential by statute or judicial decision." The Texas Supreme Court has adopted the definition of trade secret from section 757 of the Restatement of Torts. *Hyde Corp. v. Huffines*, 314 S.W.2d 763 (Tex.), *cert. denied*, 358 U.S. 898 (1958);

see also Open Records Decision No. 552 (1990) at 2. Section 757 provides that a trade secret is

any formula, pattern, device or compilation of information which is used in one's business, and which gives him an opportunity to obtain an advantage over competitors who do not know or use it. It may be a formula for a chemical compound, a process of manufacturing, treating or preserving materials, a pattern for a machine or other device, or a list of customers. It differs from other secret information in a business . . . in that it is not simply information as to single or ephemeral events in the conduct of the business . . . . A trade secret is a process or device for continuous use in the operation of the business. . . . [It may] relate to the sale of goods or to other operations in the business, such as a code for determining discounts, rebates or other concessions in a price list or catalogue, or a list of specialized customers, or a method of bookkeeping or other office management.

RESTATEMENT OF TORTS § 757 cmt. b (1939) (emphasis added).

In determining whether particular information constitutes a trade secret, this office considers the Restatement's definition of trade secret as well as the Restatement's list of six trade secret factors. RESTATEMENT OF TORTS § 757 cmt. b (1939).<sup>1</sup> This office has held that if a governmental body takes no position with regard to the application of the trade secret branch of section 552.110 to requested information, we must accept a private person's claim for exception as valid under that branch if that person establishes a *prima facie* case that the information is a trade secret and no argument is submitted that rebuts the claim as a matter of law. Open Records Decision No. 552 (1990) at 5-6. We have reviewed Southern Mutual's argument, and conclude that Southern Mutual has not provided sufficient information to establish that the records at issue constitute a trade secret. Although the company discusses how it protects the information, it has provided no information concerning the other Restatement factors and their applicability to the records. Thus, we

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<sup>1</sup>The six factors that the Restatement gives as indicia of whether information constitutes a trade secret are:

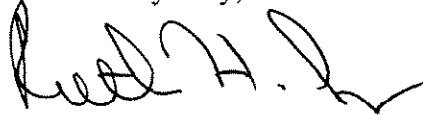
- (1) the extent to which the information is known outside of [the company];
- (2) the extent to which it is known by employees and others involved in [the company's] business; (3) the extent of measures taken by [the company] to guard the secrecy of the information; (4) the value of the information to [the company] and [its] competitors; (5) the amount of effort or money expended by [the company] in developing the information; (6) the ease or difficulty with which the information could be properly acquired or duplicated by others.

RESTATEMENT OF TORTS § 757 cmt. b (1939); see also Open Records Decision Nos. 319 (1982) at 2, 306 (1982) at 2, 255 (1980) at 2.

conclude that the rate filings are not protected trade secrets under section 552.110, and must be disclosed.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Ruth H. Soucy  
Assistant Attorney General  
Open Records Division

RHS/ch

Ref.: ID# 114712

Enclosures: Submitted documents

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